

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

AUG 23 2005

FILE

OFFICE OF
MANAGING DIRECTOR

Stephen E. Coran, Esq.
Rini Coran, PC
1501 M Street, N.W.
Suite 1150
Washington, D.C. 20005

Re: Vitech Corporation
Request for Fee Relief
Fee Control Nos. 00000RROG-05-042 and
00000RROG-05-50

Dear Mr. Coran:

This letter responds to your request filed January 18, 2005 (and supplemented February 16 and 28, 2005) on behalf of Vitech Corporation (Vitech) and Thomas A. Seaman (Seaman), the court-appointed receiver for Vitech, for a deferral or waiver of the regulatory and application fees associated with the renewal of eighteen 218-219 MHz service licenses on the grounds of financial hardship. Our records reflect that Vitech has not paid the fees at issue here.

You state that Vitech filed renewal applications for six of the licenses on January 18, 2005, and for the other twelve licenses on February 28, 2005.¹ You state that the \$9,990.00 fee for renewing the eighteen licenses includes, "for each [l]icense, a \$55.00 application filing fee and a \$500.00 advance payment of regulatory fees corresponding to a 10-year renewal term." See 47 C.F.R. §§1.1102(7)(b) and 1.1152(3)(d). Asserting that Vitech is in receivership, you submit a copy of a court order appointing Seaman as receiver for Vitech dated April 5, 2004, which was issued by the United States District Court for the Central District of California, Southern District (Court Order). You state that the Commission approved the involuntary assignment of the licenses from Vitech to Seaman on February 10, 2005, and that Seaman filed a notice of consummation via the Commission's Universal Licensing System on February 15, 2005.

Section 1.1117 of the Commission's rules, 47 C.F.R. §1.1117, provides that filing fees may be waived upon a showing of good cause and a finding that the public interest will be served thereby. See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990). The Commission has determined that it will waive regulatory fees for licensees who are bankrupt or are in receivership at the time the fees are due. See *Implementation of Section 9 of the Communications Act Assessment and Collection of*

¹ The renewal applications were filed on the dates that the respective licenses were set to expire.

Regulatory Fees for the 1994 Fiscal Year, 10 FCC Rcd 12759, 12762 (1995) (finding evidence of bankruptcy or receivership sufficient to establish financial hardship for purposes of waiver of regulatory fees); *see also MobileMedia Corporation*, 14 FCC Rcd 8017, 8027 (1999) (bankruptcy establishes good cause for waiver of filing fee). We find that the Court Order establishes that Vitech was in receivership on the dates it filed the renewal applications and substantiates Vitech's claim of financial hardship. We therefore grant your request for waiver of the regulatory and application fees associated with the renewal of the eighteen licenses in the total amount of \$9,990.00.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger".

Mark A. Reger
Chief Financial Officer



RINI CORAN, PC
Telecom | Media | Technology
Law and Policy

ORIGINAL

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~~February 28, 2005~~

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Via Hand Delivery

FEB 28 2005

Federal Communication Commission
Bureau / Office

Andrew S. Fishel, Managing Director
Office of the Managing Director
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Thomas A. Seaman (FRN: 0012217717) as Receiver for
Vitech Corporation (FRN: 0012217527), licensee of
218-219 MHz Service Authorizations:**

KIVD0396	Elkhart-Goshen, IN
KIVD0405	Decatur, IL
KIVD0409	Wichita Falls, TX
KIVD0423	Dothan, AL
KIVD0427	Anniston, AL
KIVD0454	Wausau, WI
KIVD0459	Glens Falls, NY
KIVD0467	St. Joseph, MO
KIVD0480	Elmira, NY
KIVD0493	Pine Bluff, AK
KIVD0497	San Angelo, TX
KIVD0504	Bismarck, ND

Supplement to Petition for Deferral or Waiver of Fees

Dear Mr. Fishel:

Thomas A. Seaman, the court-appointed Receiver for Vitech Corporation ("Vitech") and licensee of the above-referenced 218-219 MHz Service licenses ("Licenses"), by counsel and pursuant to Sections 1.1117(c) and 1.1166(a) of the Commission's Rules, hereby supplements his Petition for Deferral or Waiver of Fees and herein requests a deferral or waiver of the fees for the renewal applications for the Licenses.¹ These renewal applications are being filed via the FCC's Universal Licensing

¹ On November 30, 2004, Mr. Seaman filed an application for involuntary assignment of Vitech's eighteen 218-219 MHz Service authorizations listed in Attachment A hereto (File No. 0001952016). As reported to the Office of the Managing Director in Mr. Seaman's February 16, 2005 "Update to Petition for Deferral or Waiver of Fees," the FCC granted its consent to the assignment application on February 10, 2005, and Mr. Seaman submitted the required notice of consummation to the FCC on February 15, 2005. In his court appointment dated April 6, 2004, Mr. Seaman was granted the "full powers of an equity receiver" and was authorized to "take custody, control, possession and charge" of all funds and assets of Vitech and other

System. Mr. Seaman also is filing requests for waiver of the “substantial service” requirements for each License set forth in Section 95.833 or, alternatively, for an extension of time to demonstrate “substantial service.” The filing fee associated with each renewal application is \$555, and the total amount of the fees for the Licenses is \$6,660.² As detailed below, deferral or waiver of the filing fees on the basis of financial hardship is appropriate and would promote the public interest.

As the Commission is aware, Mr. Seaman is the court-appointed Receiver for Vitech, an entity involved in an alleged securities scam. On March 25, 2004, the Securities and Exchange Commission (“SEC”) filed a Complaint in the United States District Court, Central District of California, against Colin Nathanson and numerous other entities alleging violations of federal securities laws.³ In the Complaint, the SEC alleged that the defendants “raised approximately \$29.5 million from investors through fraudulent unregistered securities offerings, and then commingled and transferred money among those entities and other entities Nathanson controls.” The SEC also alleged that “in Ponzi-like fashion, Nathanson has caused \$5.1 million of the investor funds raised to be paid to investors as, among other things, purported ‘returns’ when, in fact, the investments had earned no returns.” Mr. Seaman believes that these “returns” were paid to investors in order to induce additional investment by them and others. All told, at least 2,400 individuals invested in the Nathanson entities. The alleged scam included Vitech as well as more than 40 corporations, limited liability companies, partnerships and individuals. As discussed in the Declaration of Thomas A. Seaman (Attachment B hereto) (“Seaman Declaration”),⁴ Mr. Seaman’s forensic accounting of funds indicates that approximately \$55.5 million of investor funds were raised since January 1, 2000 and that there are currently no assets available to repay investors for their loss.

The Commission’s rules provide that application fees⁵ and regulatory fees⁶ may be waived in specific instances “where good cause is shown” and where the waiver or deferral “would promote the public interest.” Mr. Seaman respectfully submits that such good cause is shown here. First, the FCC has previously noted that “[e]vidence ... of receivership is sufficient to establish financial hardship” and that the Commission would

entities and to take appropriate and necessary actions “to preserve and take control of and prevent the dissipation, concealment, or disposition of any assets of or managed by the entities in receivership.”

² This filing fee includes, for each License, a \$55.00 application filing fee (Payment Type Code: PAIR) and a \$500.00 advance payment of regulatory fees corresponding to a 10-year renewal term. *See* 47 C.F.R. §§1.1102 and 1.1152. In addition, Mr. Seaman is the licensee of six other 218-219 MHz Service licenses that have a license expiration date of January 18, 2005. On January 18, 2005, Mr. Seaman filed a request for deferral or waiver of the corresponding regulatory and application fees associated with those six stations, and the instant request seeks identical relief for the 12 above-captioned stations that have a license expiration date of February 28, 2005. Thus, the total amount subject to this request, as supplemented, will be \$9,990 for the 18 authorizations listed in Attachment A.

³ *SEC v. Nathanson*, Case No. SACV04-0351 GLT (RZx) (filed March 25, 2004).

⁴ This declaration, dated January 14, 2005, was initially submitted to the Commission on January 18, 2005 as part of Mr. Seaman’s “Petition for Deferral or Waiver of Fees.”

⁵ *See* 47 C.F.R. §1.1117(a).

⁶ *See* 47 C.F.R. §1.1166(a).

waive regulatory fees for licensees that are in receivership.⁷ As discussed above, the defendant companies and their affiliates and subsidiaries were placed into receivership upon allegations of substantial fraud and securities violations that left Vitech in dire straits with virtually no assets.

Second, there are no funds available to pay the fees given Mr. Seaman's obligations to the investors and the Court. As shown in the Seaman Declaration, the receivership estate, which includes Vitech and other entities controlled by the defendants, is currently insolvent, with a \$275,532 deficiency. At the Court's direction, Mr. Seaman has liquidated tangible assets of the estate and is holding \$515,725 in cash as of December 31, 2004; however, post-receiver liabilities and administrative expenses amount to \$811,023. The Seaman Declaration describes other funds that are not yet available for payment of the obligations of the receivership estate. In light of this financial hardship, the FCC should defer the application filing fees pending the grant of his request for waiver/extension of the deadlines for making a "substantial service" showing for the Licenses.

Third, because the Commission must consider "substantial service" in connection with license renewal, it may be unnecessary for the renewal applications to be processed. Should the FCC deny the "substantial service" waiver/extension requests, the Licenses would not be renewed and there thus would be no further need for FCC staff to process the renewal applications.⁸ For these reasons, the FCC should defer the application and regulatory fee obligations for the Licenses until such time as the FCC grants the request for waiver/extension of the "substantial service" deadlines for the Licenses. Mr. Seaman is currently prosecuting several actions to recover funds for the receivership estate, with the expectation that portions of those funds could be used for payment of the application fees and regulatory fees for the License renewals, if necessary.

In light of the financial hardship shown here, Mr. Seaman respectfully requests that the \$6,660 in fees associated with the renewal applications for the Licenses be deferred or waived as requested herein.

Kindly date-stamp the enclosed "Stamp and Return" copy of this filing and return it to our offices using the enclosed postage-prepaid envelope.

⁷ See *Implementation of Section 9 of the Communications Act Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, Memorandum Opinion and Order, 10 FCC Red 12759, 12762 (1995).

⁸ See 47 C.F.R. §95.833(c).

Please contact the undersigned counsel should you have any questions.

Respectfully submitted,


Stephen E. Coran

Enclosures